to others in the same degree,[21] but some have favored members of a more remote class before them[22] and the language of the opinions would warrant the conclusion that they are to be left in absolute exclusion.[23] Unless a statute positively requires this last construction there would seem to be nothing in our laws demanding it, for they are no longer actuated by the feudal solicitude for the blood of the first purchaser that deemed an escheat preferable to inheritance by another line,[24] and the general trend of both legislation and decision has been to enlarge more and more the rights of an half blood in intestate succession. Since the purpose has been throughout to throw off arbitrary rules and to endeavor to dispose of a deceased's property as he might have been led by ties of affection to dispose of it himself, it is reasonable to suppose that the somewhat ambiguous provision so commonly found in relation to ancestral estate was only intended to apply as between members of the same class.

ATTORNEY'S LIENS.—An attorney had a right at common law, generally designated as a retaining lien,[1] to hold property of his client till the latter paid him all that was due him. As in the case of all common law liens, it was essential that the attorney have possession of the property,[2] and that it be acquired in the regular course of his

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[21]Estate of Smith (1901) 131 Cal. 433; Estate of Kirkendall (1877) 43 Wis. 167; Rowley *v.* Stray (1875) 32 Mich. 70; Pond *v.* Irwin (1887) 113 Ind. 243; the Code of Alabama 1907, c. 74, Art. 1, § 3758 explicitly lays down this rule. And in Georgia, where it is provided that the half blood on the maternal side shall not take until after both half and whole on the paternal no matter how the property was acquired by the intestate, it is held that a member of the former class will exclude those of the latter who are more remote. Ector *v.* Grant (1901) 112 Ga. 557.

[22]Dozier *v.* Grandy (1872) 66 N. C. 484; Amy *v.* Amy (1895) 12 Utah 278; Wheeler *v.* Clutterbuck, *supra*; Kelly *v.* McGuire, *supra*. In Tennessee the half blood of that side of the family from which the land did not come is only postponed until the half blood on the other side is exhausted. Nesbit *v.* Bryan (Tenn. 1852) 1 Swan 468; Code 1896, c. 4, Art. 1, § 4163 (3) (a).

[23]See Wheeler *v.* Clutterbuck, *supra*; and especially Amy *v.* Amy, *supra*; Kelly *v.* McGuire, *supra*. In New Jersey half brothers and sisters not of the blood of the ancestor have been admitted from an early date, Den *v.* McKnight (1830) 11 N. J. L. 456, but in more remote degrees those not of the blood of the ancestor were formerly shut out, see Stretch *v.* Stretch (1818) 4 N. J. L. 182; Bray *v.* Taylor (1872) 36 N. J. L. 415. At the present time, however, it would seem the half blood in more remote degrees get the estate if there is no one in existence, however remote, entitled by virtue of inheritable blood, see 2 N. J. Comp. Stat. 1910, p. 1920, § 6.

[24]See Brown *v.* Brown (Vt. 1815) 1 D. Chip. 360. And the true theory of the common law rule is sufficiently shrouded in obscurity to forbid its being regarded as a sound basic principle that should serve as a guide to construction, see 2 P. & M. Hist. Eng. Law (2nd Ed.) 302-7; 4 Kent, Comm. *406.

[1]It has been called a right of set-off, Wells *v.* Hatch (1861) 43 N. H. 246; also a right of defalcation. Dubois's Appeal (1861) 38 Pa. 231.

[2]Bozon *v.* Bolland (1839) 4 Myl. & C. 354; Nichols *v.* Pool (1878) 89 Ill 491. A surrender of the property, even through mistake, destroys the lien. Dicas *v.* Stockley (1836) 7 C. & P. 587.

professional business.[3] He was entitled in the exercise of this right, to detain any paper belonging to his client,[4] or an article entrusted to him to exhibit to the jury,[5] or an execution or copy of a judgment, but not a judgment, because there could be no possession of the latter.[6] He could also retain money collected on a judgment[7] or other funds of his client which came into his possession, unless they had been specially deposited.[8] This lien extended not merely to the services performed in that particular action, but to the general balance of account of all debts due the attorney in his professional capacity.[9] It was, however, merely a passive right,—to embarrass the client by the non-production of the property,—and gave the attorney no such means of enforcement as the pledgee's right of sale.[10] The attorney's position as an officer of the court also subjected him to a summary jurisdiction by which the court could compel him to give up his client's papers upon the latter's indemnifying him,[11] and to pay over money wrongfully withheld.[12]

Another right of the attorney not dependent upon possession, and therefore not strictly a lien, was that known as a charging lien.[13] This was a right attaching to a judgment procured through the efforts of the attorney, to have the court protect his claim if the client tried to deprive him of his costs.[14] In the absence of agreement[15] the lien was special, and in England covered only the taxable costs[16] in the particular action resulting in the judgment, and was not available to satisfy the attorney's general account with the client.[17] A few jurisdictions in which there was no statute providing for taxing costs, have denied the existence of a charging lien on a judgment,[18] but in most jurisdictions it is allowed, at least to the extent of the taxable costs and disbursements, which in this country do not include the

[3]Hollis *v.* Claridge (1813) 4 Taunt. 807; Stevenson *v.* Blakelock (1813) 1 M. & S. 535.

[4]*Ex parte* Sterling (1809) 16 Ves. 257; Sanders *v.* Seelye (1889) 128 Ill. 631; McPherson *v.* Cox (1877) 96 U. S. 404.

[5]Friswell *v.* King (1846) 15 Sim. 191.

[6]Patrick *v.* Leach (1881) 12 Fed. 661; see Wright *v.* Cobleigh (1850) 21 N. H.. 339.

[7]See Welsh *v.* Hole (1779) 1 Doug. 238; Matter of Knapp (1881) 85 N. Y. 284.

[8]Anderson *v.* Bosworth (1887) 15 R. I. 443.

[9]*Ex parte* Sterling, *supra*; Finance Co. *v.* Charleston, C. & C. R. R. (1891) 46 Fed. 426; see *In re* Galland (1885) L. R. 31 Ch. D. 296; but see McDonald *v.* Napier (1853) 14 Ga. 89.

[10]West of England Bank *v.* Batchelor (1881) 51 L. J. [N. S.] 199; Bozon *v.* Bolland, *supra.*

[11]*Re* Jewitt (1864) 34 Beav. 22; *In re* Galland, *supra.*

[12]Moulton *v.* Bennett (N. Y. 1836) 18 Wend. 586.

[13]It is sometimes said that this lien exists only by statute. Forsythe *v.* Beveridge (1869) 52 Ill. 268; Simmons *v.* Almy (1869) 103 Mass. 33.

[14]See Mercer *v.* Graves (1872) L. R. 7 Q. B. 499.

[15]Williams *v.* Ingersoll (1882) 89 N. Y. 508; Cooke *v.* Thresher (1883) 51 Conn. 105.

[16]See Welsh *v.* Hole, *supra.*

[17]Hazeltine *v.* Keenan (1904) 54 W. Va. 600; Weed *v.* Boutelle (1884) 56 Vt. 570.

[18]*Ex parte* Kyle (1850) 1 Cal. *331.

attorney's fees.[19] Some have extended it to cover even these.[20] As the lien did not attach till judgment was entered, and as public policy required that the parties should be free to settle their controversy, the attorney's charging lien was absolutely defeated if the parties settled before judgment,[21] unless their settlement was clearly collusive and in fraud of the attorney.[22] But after judgment if the defendant with actual or constructive notice of the lien paid the plaintiff, he could be compelled to pay the attorney the amount of his lien.[23] This was a result of the view that the attorney was an equitable assignee of part of his client's claim.[24] The same rule has been extended by statute in many States to the period before judgment, by giving the attorney a charging lien, not upon the judgment, but upon the suit itself;[25] and if the defendant with notice of the lien settled with the plaintiff, the attorney could continue the action in the plaintiff's name and recover the amount of his lien.[26]

Although there is a strong presumption that the attorney intends to enforce his lien,[27] it may be rebutted by evidence of expressions or conduct clearly indicating an intention to waive it.[28] Accordingly, a lien dependent upon possession, such as the retaining lien, is extinguished by a surrender of the property[29] or by an agreement to surrender it before payment.[30] The taking of securities also raises a presumption that the attorney no longer relies on his lien,[31] but not if the securities are worthless or if their acceptance is conditional.[32] The charging lien is extinguished when the property is reduced to possession, its purpose having then been fulfilled, and the attorney

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[19]Newbert *v.* Cunningham (1863) 50 Me. 231; see Wells *v.* Hatch, *supra.*

[20]Weed *v.* Boutelle, *supra*; Andrews *v.* Morse (1838) 12 Conn. 444.

[21]Nelson *v.* Wilson (1830) 6 Bing. 568; Henchey *v.* Chicago (1866) 41 Ill. 136. A contract that a client will not settle without the consent of his attorney has been held void. Matter of Snyder (1907) 190 N. Y. 66; but see Twiggs *v.* Chambers (1876) 56 Ga. 279.

[22]Cole *v.* Bennett (1818) 6 Price 15; Ormerod *v.* Tate (1801) 1 East 464; Heister *v.* Mount (1840) 17 N. J. L. 438.

[23]Andrews *v.* Morse, *supra*; see United Railways Co. *v.* O'Connor (1910) 153 Mo. App. 128.

[24]Marshall *v.* Meech (1872) 51 N. Y. 140; Williams *v.* Ingersoll, *supra.*

[25]N. Y. Judiciary Law, c. 35, § 475; Mass., Rev. Laws (1902) c. 165, §48; Ill., Rev. Stat. (1913) 1571, § 55. A lien thus created can be destroyed by the termination of the suit. Brown *v.* Georgia etc. Ry. (1897) 101 Ga. 80.

[26]Little *v.* Sexton (1892) 89 Ga. 411.

[27]Renick *v.* Ludington (1880) 16 W. Va. 378; Leszynsky *v.* Merritt (C. C. 1881) 9 Fed. 688; *In re* Morris [1908] 1 K. B. 473.

[28]The attorney waives both his retaining and charging liens by declaring that he holds the property in trust and in no other way. West *v.* Bacon (1900) 164 N. Y. 425.

[29]Dicas *v.* Stockley, *supra*; Nichols *v.* Pool, *supra.*

[30]See Stoddard Co. *v.* Huntley (1837) 8 N. H. 441; Wiles Co. *v.* Hahlo (1887) 105 N. Y. 238. It is not revived by the creditor's insolvency. Fielding *v.* Mills (N. Y. 1858) 2 Bosw. 489.

[31]Cowell *v.* Simpson (1809) 16 Ves. 275. The presumption may be rebutted. Renick *v.* Ludington, *supra,* p. 396.

[32]See Blumenberg Press *v.* Mutual Agency (N. Y. 1902) 77 App. Div. 87; Johnson *v.* Johnson R. R. Signal Co. (1898) 57 N. J. Eq. 79.

then has a retaining lien.[33] And if he takes securities under circumstances which are inconsistent with the theory of a charging lien, he waives it unless he gives notice to the client that he still relies upon it.[34] In the recent case of *Matter of Heinsheimer* (1915) 214 N. Y. 361, the court held that the attorney's agreement to accept salary, payable semiannually, was inconsistent with reliance upon his charging lien, and therefore constituted a waiver of it. The decision is clearly sound, the agreement indicating that the payment of salary is not a mere additional security to be resorted to only if the right of lien should be barren, but is to be the sole source of remuneration.

LIABILITY OF MUNICIPAL CORPORATIONS FOR PROPERTY DESTROYED BY MOBS.—One of the governmental duties placed by the sovereign power in the hands of municipal officers is that of conserving the peace and good order of the community.[1] Consequently, since in its exercise of public functions a local sub-division of the State enjoys the same exemption from suits as the State itself,[2] the courts are unanimous in holding that under the common law a municipality is not liable for property within it destroyed by a riotous assembly.[3] From the earliest times, however, it was usual to impose upon the vill and hundred in England a fixed liability for lawlessness occurring in their midst with the purpose of engaging the interest of everyone in the suppression of acts of violence.[4] And by statutes of more recent dates persons whose property is damaged by acts of riotous or tumultuous assemblies are given adequate remedies against the local sub-divisions in which such grievances occur.[5] Following the lead of the English legislators and recognizing that the maintenance of social good order is of paramount importance, a number of American States

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[33]Wells *v.* Hatch, *supra*; see Weber v. Werner (N. Y. 1910) 138 App. Div. 127. No intent to waive it can be inferred from the permission of the attorney to his client, or to his assistant counsel, to collect the judgment. Farmer *v.* Stillwater Co. (1909) 108 Minn. 41; Fuller *v.* Clemmons (Ala. 1908) 48 So. 101.

[34]*In re* Morris, *supra*. It was urged by Kennedy, L. J., that the taking of securities for costs generally, should always be a waiver in the absence of notice to the client, because of the confidential relation between attorney and client, p. 480.

[1]See Norristown *v.* Fitzpatrick (1880) 94 Pa. 121.

[2]14 Columbia Law Rev., 690.

[3]Dillon, Municipal Corporations (5th ed.) § 1636; Prather *v.* Lexington (1852) 52 Ky. 559; see Mayor *v.* Poultney (1866) 25 Md. 107. Nor does a provision in a city charter that "it shall be their (the municipal officers') duty to regulate the police of the city, preserve the peace, prevent riots, disturbances and disorderly assemblages" in any way affect the city's common law exemption. Western College *v.* Cleveland (1861) 12 Oh. St. 375.

[4]1 Reeves', History of English Law (2nd ed.) 17; Statute of Winchester, 13 Edw. I, c. 1, 2 & 3 (1285), Poulton's Collection of English Statutes, 55. See Darlington *v.* Mayor (1865) 31 N. Y. 164.

[5]7 & 8 Geo. IV. (1827) c. 31; 49 & 50 Vict. (1886) c. 38.